

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 10th
day of August, 2011.

In the Matter of the Joint Application of)	
Algonquin Water Resources of Missouri, LLC,)	
d/b/a Liberty Water for Authority for Liberty Water)	<u>File No. WO-2011-0328</u>
to Acquire Certain Assets of Noel Water Co.,)	
Inc. and, in Connection Therewith, Certain)	
Other Related Transactions)	

ORDER APPROVING JOINT APPLICATION

Issue Date: August 10, 2011

Effective Date: August 20, 2011

Syllabus: This order approves the application of Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water (“Liberty Water”) and Noel Water Co. Inc. (“Noel Water”) for Liberty Water to purchase substantially all of Noel’s assets.

Procedural History

On April 6, 2011,¹ Liberty Water and Noel Water filed a joint application. That application requests, among other things, authority from the Commission for Noel Water to sell its water system and its certificate of convenience and necessity to Liberty Water. Liberty Water and Noel Water entered into an agreement on March 4, 2011, in which Liberty Water agreed to purchase Noel Water’s water system.

¹ All calendar references are to 2010 unless otherwise noted.

The Commission issued notice of this application on April 13. In that notice, the Commission allowed anyone who wished to intervene until May 3 to request intervention. The Commission received no intervention requests.

Staff requested a local public hearing on May 27. The Commission convened a local public hearing on June 28. No witnesses testified.

Staff filed its Recommendation on July 25, and filed its Amended Recommendation on August 3. Staff recommends that the Commission approve the transaction, with certain conditions. The Office of the Public Counsel, Liberty Water, and Noel Water responded on August 4, stating that they had no objection to Staff's Amended Recommendation.

Discussion

The application is within the Commission's jurisdiction to decide.² Because no party objects to the application, no evidentiary hearing is required.³ Thus, the Commission deems the hearing waived,⁴ and bases its findings on the verified filings, and makes its conclusions as follows.

Noel Water is a water corporation and public utility. It holds a certificate of convenience and necessity to provide water service. Noel currently provides water service to 658 residential customers in McDonald County, Missouri.

² Section 393.190 RSMo 2000.

³ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n*, 776 S.W.2d 494 (Mo. App. 1989).

⁴ Section 536.060, RSMo 2000.

Liberty Water is a water corporation, a sewer corporation, and a public utility. Liberty Water provides water service to approximately 917 customers, and sewer service to approximately 385 customers, in Missouri.

The Commission may approve a sale of a water company if that sale is not detrimental to the public interest.⁵ Based on the verified pleadings, the Commission finds that granting the application for the sale of the water company would not be detrimental to the public interest. The application will be granted.

The Commission further finds that good cause exists for Noel Water and Liberty Water to be excused from the Commission Rule 4 CSR 240-4.020 requirement of filing a 60-day notice prior to filing its application. To constitute good cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”⁶ Liberty Water and Noel Water state, and the Commission finds, that this case was not likely to be a contested case.

THE COMMISSION ORDERS THAT:

1. The Joint Application is granted.
2. Commission Rule 4 CSR 240-4.020 is waived.
3. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall notify the Commission within five (5) business days after the assets have been transferred.

⁵ See Commission Rule 4 CSR 240-3.605(1)(D).

⁶ *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

4. Upon receipt of the notice listed in ordered paragraph three, the Commission shall cancel the certificate of convenience and necessity held by Noel Water Co., Inc., and shall grant Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water a certificate of convenience and necessity to provide water service in the service territory currently held by Noel Water Co., Inc.

5. Noel Water Co., Inc., and Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall, if closing on the assets has not occurred within thirty days after the effective date of an Order from the Commission approving this transfer of assets, file a status report with the Commission thirty days after the effective date of the Order, and at the end of each subsequent thirty (30) day period until closing and the transfer of assets is complete; and, alternatively, if the transfer is not expected to be completed, Noel Water Co., Inc., and Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall file a pleading with the Commission stating such.

6. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall, within five (5) business days after closing, file tariff adoption notice sheets, adopting the water tariff currently in effect for Noel Water, with thirty day notice, authorizing Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water to use the rates and rules of Noel Water's tariff on an interim basis until the effective date of such tariff adoption notice.

7. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall, any time before five days after closing, file tariff adoption notice sheets, with thirty day notice, for its existing water tariff and sewer tariff to update its operating name, and

limiting the applicability of those tariffs to the Timber Creek, Holiday Hills, and Ozark Mountain service areas.

8. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall use its company name of Algonquin Water Resources of Missouri, LLC, or file appropriate documentation with the Commission which would allow it to use its chosen fictitious name of Liberty Water, and to take all steps necessary to ensure that the name is consistently used in all communications with its Missouri customers, including billing and filings with the Missouri Public Service Commission, including certificates, tariffs and annual reports.⁷

9. The Commission orders no recovery of acquisition adjustment or acquisition premium in this case, or any future rate cases.

10. The Commission makes no finding that would preclude the Commission from making any determination on any matter in any future rate proceeding, unless otherwise specified in the order.

11. Noel Water Co., Inc., shall transfer all plant records, operations records, and expense records to Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water., Inc. upon closing of the assets, and Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall adopt the individual plant in service, depreciation reserve and contribution in aid of construction (CIAC) balances utilized by the Audit Staff, valued at May 31, 2011, for purposes of determining the appropriate rate base in this proceeding as a starting point for plant in service, depreciation reserve and contributions in aid of construction (CIAC) for the water system of Noel Water Co., Inc.

⁷ Per Commission File No. WN-2012-0025 and File No. SN-2012-0026, the Commission has granted permission for Algonquin Water Resources of Missouri, LLC to use the fictitious name of Liberty Water as of August 24, 2011.

recorded in the books and records of Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water, and Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall be required to maintain and retain proper plant in service, depreciation reserve and contribution in aid of construction (CIAC) records on a going forward basis, with the Staff of the Commission meeting with Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water to explain in detail how to maintain these types of records, if necessary.

12. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall maintain its books and records in Missouri or, in absence of such records being maintained in Missouri, shall provide access to its books and records in Missouri. In accordance with the Commission rules, Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water understands that if its books and records, including the newly acquired system of Noel Water Co., Inc. are not provided for review in Missouri, then Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall be responsible for any and all travel costs to review said records. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall comply with all current and future Commission rules and procedures, including use of the appropriate USOA Chart of Accounts, timeliness of Annual Reports to the Commission, and payment and timeliness of annual Public Service Commission Assessments.

13. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall use the schedule of depreciation rates set out in Attachment 1 to the Staff's Amended Recommendation that were prescribed by the Commission and used by Noel Water

Co., Inc., from the date of the transfer forward, until changed by any future order of the Commission.

14. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall, in any future rate increase request, file concurrently for all its Missouri regulated water and sewer service areas.

15. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall begin reporting call center information to the Manager of the Engineering and Management Services Department, as described in the Amended Memorandum attached to Staff's Amended Recommendation.

16. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall notify the Manager of the Engineering and Management Service Department and the Office of the Public Counsel at least forty-five days prior to the anticipated closure of the local office and provide both agencies a copy of the anticipated customer notification.

17. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall notify the Manager of the Engineering and Management Service Department and the Office of the Public Counsel of the transfer, elimination or separation of any employees that are located in Missouri concerning the Noel Water Co., Inc. system, if such action occurs within twelve months of the notice of closing of utility assets as required in ordered paragraph 3.

18. Algonquin Water Resources of Missouri, LLC, d/b/a Liberty Water shall maintain an Emergency Plan, similar to that described in Attachment 2 of Staff's Amended Recommendation, which includes notification to the fire departments, local

media, Staff of the Water and Sewer Department, and the Office of the Public Counsel when any such emergency occurs.

19. This order shall become effective on August 20, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett,
and Kenney, CC., concur.

Pridgin, Senior Regulatory Law Judge